IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3864 OF 2005

Miss Sheetal Mathias Ekka. ...Petitioner.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mr. R. K. Mendadkar for the Petitioner.
Mr. C. R. Sonawane, AGP for the Respondents.

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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

June 21, 2005.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

The Petitioner's father was originally a resident of village Barilepta in the District of Sundargarh, in the State of Orissa. He was born in the State of Orissa and according to the Petitioner, he belongs to the Oraon Tribe. The Petitioner's father is stated to have migrated

to the State of Maharashtra and is employed with Hindustan Aeronautics Ltd., at Nasik. The Petitioner was born in the State of Maharashtra on 17th February 1987. The Petitioner completed her H. S. C. in February 2004 and appeared for the Common Entrance Test conducted by the State of Maharashtra. The Petitioner claimed in her application that she belongs to a Scheduled Tribe. After the result of the Common Entrance Test was declared, the Petitioner visited the office of the Competent Authority on 8th July 2004 inter alia with a copy of a caste certificate dated 6th April 2002 issued by the Tahsildar, Birmitrapur. The Scrutiny Officer did not accept the caste certificate on the ground that it was issued by an Authority in the State of Orissa. The Petitioner thereupon obtained a caste certificate dated 16th August 2004 from the Sub Divisional Officer, Niphad in the District of Nasik and moved the Competent Authority and Director of Medical Education and Research on 18th August 2004.

2. A petition was moved before this Court under Article 226 of the Constitution (Writ Petition 7262 of 2004) and on 2nd September

2004, a Division Bench of this Court granted ad-interim relief in terms of prayer clause (b) directing the State Government to admit the Petitioner to the MBBS Degree Course in any college in a seat reserved for the Scheduled Tribe category taking into consideration the rank of the Petitioner in the S. T. category. The petition was thereafter disposed of on 14th September 2004 on the statement of the AGP that the case of the Petitioner would be considered for admission to the MBBS Course in the S. T. category and that she would be admitted if she was otherwise found to be eligible subject to the production of a caste validity certificate from the Competent Authority within the stipulated period.

3. The case of the Petitioner was taken up by the Committee for Scrutiny and Verification of Tribe Claims, Nasik. By an order dated 23rd March 2005, the Committee invalidated the claim of the Petitioner. The Committee has noted that the caste certificate and documents produced by the Petitioner indicated that her father was originally a resident of the State of Orissa and had migrated to the

State of Maharashtra. In the circumstances, since the father of the Petitioner had migrated to the State of Maharashtra after the issuance of the first Presidential Order on 6th September 1950, the Committee held that the Petitioner would not be entitled to derive benefit in the State of Maharashtra, but in the State of origin.

4. The decision of the Scrutiny Committee has been challenged in these proceedings under Article 226 of the Constitution.

5. Counsel appearing on behalf of the Petitioner has questioned the decision of the Scrutiny Committee by relying upon a decision of the Supreme Court in **Union of India vs. Dudh Nath Prasad, (**2000) 2 SCC 20. It was urged that the Oraon Tribe is listed as a Scheduled Tribe in the State of Maharashtra as well and that consequently though the Petitioner' sfather has migrated from the State of Orissa to Maharashtra, the Petitioner was still entitled to claim the benefit of belonging to the Oraon Tribe in this State.

6. The law on the subject is no longer res integra but is now the subject matter of decisions of two Constitution Benches of the Supreme Court. Under Articles 341 and 342 of the Constitution, the President is empowered to specify the caste or, as the case may be, tribe or tribal communities or parts thereof which shall for the purposes of the Constitution be deemed to be Scheduled Castes or, as the case may be, the Scheduled Tribes "in relation to that State or Union Territory". In **Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College,** (1990) 3 SCC 130, the Supreme Court held that while there is no restriction on migrating from one State to another, but where a person belonging to a Scheduled Caste or Tribe from one State migrates "he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof". (para 13 at p.143). The Court held that "the expression, "in relation to that State", would become nugatory if in all States the special privileges granted to Scheduled Castes or Scheduled Tribes are carried forward" (ibid). The Court held that this would be inconsistent with the whole purpose

of the scheme of reservation.

7. The issue was revisited by another Constitution Bench of the Supreme Court in **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra vs. Union of India,** (1994) 5 SCC 244. The question which was framed by the Constitution Bench for decision was thus:

> "Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribe in State B?"

The Supreme Court adverted to the earlier decision in **Marri**

Chandra's case (supra). The position in law has been enunciated in the following terms in the judgment of the Constitution Bench:

> "We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that cast, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same

> nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution makers as is evident from the choice of language of Articles 341 and 342 of the Constitution." (Para 16 at p.259).

The Supreme Court in its decision in **Action Committee**'s case reiterated the view in the earlier judgment.

8. Both these judgments are a clear answer to the submission which has been urged on behalf of the Petitioner. The father of the Petitioner migrated from the State of Orissa. The Oraon Tribe to which the Petitioner's father belongs is listed as a Scheduled Tribe in relation to the State of Orissa. Neither the Petitioner's father, nor the Petitioner would be entitled to the benefits in the State of

Maharashtra. In **Action Committee,** the Supreme Court has clearly laid down that even if coincidently a caste or tribe bearing the same nomenclature is specified in two States, the considerations on the basis of which they are specified may be totally different. As the Supreme Court noted, merely because a Tribe is specified in State A as a Scheduled Tribe does not necessarily mean that if there be another tribe bearing the same nomenclature in another State, a person belonging to the former, would be entitled to the benefits admissible to a Scheduled Tribe in the latter State for the purposes of the Constitution.

9. Counsel appearing on behalf of the Petitioner has, however, relied upon a decision of the Supreme Court in **Union of India vs. Dudh Nath Prasad,** (2000) 2 SCC 20. In the case before the Supreme Court, the Respondent was a member of the Indian Administrative and Allied Services and was appointed against a reserved vacancy. The Instructions issued to candidates appearing for the Civil Services Examination by the UPSC required that a

Scheduled Caste Certificate must be issued by the District Officer or Sub Divisional Officer, of the District in which the parents of the candidate ordinarily reside. In the case before the Supreme Court, the Respondent and his parents belonged to the Nuniya community which was declared as a Scheduled Caste in the State of West Bengal, but not in the State of Bihar. The parents of the Respondent had lived in the State of West Bengal for more than 30 years. In this factual background, the Supreme Court held that the SDO in the District of Howrah in the State of West Bengal could have lawfully issued a caste certificate since in terms of para 5 of the Instructions to candidates, the parents of the Respondent had admittedly lived in West Bengal for more than 30 years. The Court held as follows:

> "Applying the requirements set out in para 5 of the "instructions" to the facts of this case, it will be found that since the parents of the respondent were, admittedly, living in District Howrah for more than 30 years before the examination in question was held, the District Officer or, for that matter, the Sub Divisional Officer in the instant case,

> could legally issue the caste certificate and also certify that his parents were “ordinarily residing” in District Howrah. The mere fact that the respondent, for purposes of education, stayed in the State of Bihar and graduated from a college in that State, would not affect the status of his parents who were already living in District Howrah for more than 30 years and consequently could be treated as “ordinarily residing” in District Howrah. Their status would not be affected by the temporary residence of the respondent, for the purpose of his education, in the State of Bihar. In such a situation, the respondent had no option but to obtain the certificate from the the Sub Divisional Officer, Howrah, as he could not have deviated from the “Instructions” already issued by UPSC.”

Para 5 of the instructions specified that the expression “ordinarily residing” would have the same meaning as in Section 21 of the Representation of People Act, 1950. This decision of the Supreme

Court, therefore, turns upon the specific norm which was laid down in para 5 of the Instructions for the Civil Services Examination. In **Dudh Nath Prasad**'s case the issues which the Constitution Bench considered in **Marri Chandra** and **Action Committee** (supra) did not fall for consideration. The principles laid down by the Constitution Bench of the Supreme Court in the aforesaid two decisions govern the present case and as noted earlier provide a clear answer.

10. In these circumstances, we are of the view that the submission of the Petitioner for the grant of a caste validity certificate cannot be accepted. The view which has been taken by the Scrutiny Committee is in consonance with the law laid down by the two Constitution Benches of the Supreme Court. Though one of the grounds in the petition was that the Scrutiny Committee passed the impugned order without furnishing an opportunity of a personal hearing to the Petitioner, since the question which has been urged in these proceedings is based on a question of law which is concluded by judgments of the Supreme Court, we have heard Counsel

appearing on behalf of the Petitioner at this stage so that the matter could be finally adjudicated upon. The Petitioner is not entitled to admission to the MBBS Degree Course against a seat reserved for a Scheduled Tribe. The order of this Court dated 14th September 2004 makes it clear that the admission would be provisional subject to the production of a caste validity certificate from the Competent Authority. Since the Petitioner has correctly been held not to belong to a Scheduled Tribe, this petition shall have to be dismissed and no further protection can be granted to the Petitioner. The petition is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

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